



W.P.(MD).No.2826 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.2826 of 2021
and
W.M.P(MD)No.2312 of 2021

T.Somasundaram,
Retired Special Sub Inspector of Police,
S/o.S.Thirugnanasambandam,
No.11, Rathinasamy Nagar 1st Street,
N.K.Road,
Thanjavur – 613 006.

... Petitioner

Vs.

- 1.The State Government of Tamil Nadu,
Represented through its Secretary,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 4.The Superintendent of Police,
Thanjavur.



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5.The Principal Account General (A & E),
Annasalai,
Chennai – 18.

6.The Superintendent,
Salary Section,
Superintendent of Police Office,
Thanjavur.

7.The Administrative Officer,
Superintendent of Police Office,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of regulation order passed by the fourth respondent in D.O.No.68/2020 in R.C.No.S2/2501/2020, dated 06.02.2020 and subsequent order of recovery in C.No.D1/404/2020, dated 06.08.2020 and quash the same, further direct the respondents to repay the recovered sum of Rs.1,77,649/- (One Lakh Seventy Seven Thousand Six Hundred and Forty Nine Only) with 18% interest.

For Petitioner : Mr.T.S.Mohamed Mohideen

For RR 1 to 4, 6 & 7 : Mr.N.Muthu Vijayan
Special Government Pleader

For R – 5 : Ms.S.Mahalakshmi
Standing Counsel



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ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned regulation order passed by the fourth respondent in D.O.No.68/2020 in R.C.No.S2/2501/2020, dated 06.02.2020 and subsequent order of recovery in C.No.D1/404/2020, dated 06.08.2020 and quash the same, further direct the respondents to repay the recovered sum of Rs.1,77,649/- (One Lakh Seventy Seven Thousand Six Hundred and Forty Nine Only) with 18% interest.

2.Heard Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner, Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents 1 to 4, 6 & 7 and Ms.S.Mahalakshmi, learned Standing Counsel appearing for the fifth respondent and perused the materials available on record.

3.The petitioner was appointed as Grade II Police Constable on 10.12.1988 with a basic pay of Rs.505/-. Later he was promoted as Grade I Police Constable, Head Constable and Special



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Sub-Inspector of Police on 28.09.1999, 28.10.2004 and 01.10.2014 respectively. The petitioner retired from service on 30.06.2020. The fourth respondent vide proceedings in D.No.68 of 2020 in R.C.No.S2/2501/2020, dated 06.02.2020 passed an order of regulation of pay and the subsequent order of recovery in C.No.D1/404/2020, dated 06.08.2020. The petitioner opposed the regulation of pay and recovery, but the Department forced the petitioner to pay an amount of Rs.1,77,649/-, failing which, he was informed that he would not be allowed to retire and his retirement benefits would not be disturbed. Left with no other option, during Covid-19, on 07.08.2020, the petitioner paid the amount of Rs. 1,77,649/-. Till that date, from March to September, 2020, the petitioner was not paid with pension. Only on receipt of the said amount, the treasury released his pension in the month of November, 2020. On 13.10.2020 only, no due certificate was issued to him.

4.The impugned orders, dated 06.02.2020 and 06.08.2020 are based on a Government Letter in No.39839/Police V / 07-3, dated 24.08.2007, by which, clarification was given by the Department of Home (Police V), Secretariat, Chennai – 9 and the same reads as follows:-

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"I am directed to refer to your letter cited wherein it has been requested to clarify as to whether the Police Personnel who are upgraded as Grade I Police Constable may be permitted to exercise their option to fix their pay till the date of accrual of the next increment under FR 22(1) a(i) in the lower rank or whether their pay may be fixed under relevant rules from the date of their actual date of upgradation. In this connection, I am directed to state that Grade II Police Constables who have completed 10 years of service as on 20.10.2004 are deemed to have been upgraded and not promoted with reference to any panel. Therefore, their pay shall be fixed under FR 22-B straightaway on that date itself without getting any option."

5.The said Government Letter, dated 24.08.2007 has been cancelled on 06.02.2019 by the first respondent vide Letter M.S.No.83, dated 06.02.2019 and the relevant portion of which is extracted as follows:-

"2.I am to state that in your letters cited, it has been stated that the police personnel who were appointed as Grade II Police Constables in the year



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1981, 1982, 1984 and 1985 and upgraded as Special Sub Inspector of Police in Thoothukudi have given representations that their Juniors who were appointed as Grade II Police Constables in the year 1986 and upgraded as Special Sub-Inspector of Police are getting more pay than these police personnel and requested for pay rectification, and it is verified that, they are eligible for fixation of pay on par with their Juniors. For the Police Constables who were upgraded in the year 1994, their pay was fixed based on their option in pay fixation. It has also been requested to clarify from which date the clarification given by Government viz, letter dated 24.08.2007 may be given effect.

3. In this regard, I am to state that, generally in most of the cases where the posts have been upgraded to next category, fixation under FR.22(B) including exercising option under 8th proviso is allowed. Upgradation of posts of Police Personnel have been done as a special case based on the then Chief Minister's Announcement and Government's Policy decision and hence, fixation of pay of the police personnel as per the options exercised by the individuals, need not be denied.

4. I am, therefore, to direct that the instructions issued in Government letter No.39839/Police.V/2007-3, Home Department, dated 24.08.2007 is hereby cancelled. As per Rule provisions, options exercised within a stipulated period of one month shall only be



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entertained and there is no rule provision to entertain belated options. Hence, no fresh options need be obtained from the individuals in whose cases, orders for fixation of pay were issued long ago. However, if any junior getting more pay anomaly is brought to notice by any senior, then action may be taken to rectify it as per ruling (2) under FR.22(B) or other relevant rules in force."

6. Based on the said Letter, the revision of pay has already been cancelled. As a result of which, the revision/regulation of pay is non-est in the eye of law. The last drawn pay shown in his pension proposal was Rs.52,500/-. The impugned order is against the dictum laid down by the Hon'ble Apex Court in the case of ***State of Punjab and other Vs. Rafiq Masih (White Washer's case)*** reported in ***2015 (4) SCC 334***.

7. The fourth respondent filed a counter-affidavit. The learned Special Government Pleader appearing for the respondents 1 to 4 & 5 to 7 admitted the mistakes on their part in passing the order of regulation of pay. He further submitted that as per the instructions/clarifications issued in the Government Letter in No. 39839/Police V / 07-3, dated 24.08.2007 and Government Letter in



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No.3602/Pol.V/2008-2, dated 28.04.2008, the pay of the Police Personnel who were upgraded from one post to higher post shall be fixed under FR 22B straightaway on that date itself ie., the date of upgradation without getting any option. The pay of the above SSIs were mistakenly fixed under FR 22(1)(a)(i) with effect from 28.09.1999 and refixed under FR 22(b) with effect from 01.10.1999 at their option. Hence, it has been ordered that the abovesaid communications are cancelled and their pay was regulated. In the said order, it has been ordered that the overdrawn amount will be recovered from them. In the order of the fourth respondent, dated 06.02.2020, the petitioner was directed to remit over drawn amount of Rs.1,77,649/- to the Government. Accordingly, the petitioner himself came forward to remit the above amount in one lumpsum at the office of the fourth respondent on 07.08.2020. He fairly conceded that the impugned orders, dated 06.02.2020 and 06.08.2020 are based on the clarification issued in the Government Letters, dated 24.08.2007 and 28.04.2008 and that the Government Letter, dated 24.08.2007 was cancelled by the first respondent in Letter (MS) No.83, Home (Police-8) Department, dated 06.02.2019. Thus, based on the letter, the revision of pay which has been ordered was cancelled. As a result of which, the petitioner's pay has to be restored. On receipt of the said restoration



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order, arrears of pay and allowances, if any, will be drawn and paid to the petitioner.

8.In view of the admission made by the learned Special Government Pleader, the impugned order passed by the fourth respondent dated 06.02.2020 is hereby quashed and the subsequent order of recovery, dated 06.08.2020, passed by the fourth respondent is hereby quashed. consequently, this Court direct the first respondent to repay the recovered sum of Rs.1,77,649/- to the petitioner with interest at the rate of 6% from the date of recovery till the date of realization within a period of twelve weeks from the date of receipt of a copy of this order.

9.With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Secretary,
Represented by the State Government of Tamil Nadu,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 4.The Superintendent of Police,
Thanjavur.
- 5.The Principal Account General (A & E),
Annasalai,
Chennai – 18.
- 6.The Superintendent,
Salary Section,
Superintendent of Police Office,
Thanjavur.
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L.VICTORIA GOWRI, J.

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